

# Quantity Purchase Agreement With The State Of Indiana

Vendor: NETECH CORPORATION  
Remit to: 4595 BROADMOOR AVE SE STE 190  
GRAND RAPIDS MI 49512

Name and Address of Vendor: NETECH CORPORATION  
Cnct: Brent Clodgo  
4595 BROADMOOR AVE SE STE 190  
GRAND RAPIDS MI 49512

<b>Qty Purchase Agreement QPA Number</b>		<b>Page</b>
0000000000000000000010120		1 of 1
<b>Requisition Nbr.:</b>	<b>RFP 5-21</b>	
<b>Effective Date:</b>	<b>10/26/2006</b>	
<b>Expiration Date:</b>	<b>10/25/2010</b>	
<b>Agency Number:</b>		
<b>Facility:</b>	<b>ALL STATE AGENCIES</b>	
<b>Vendor Federal ID:</b>	<b>383306451</b>	
<b>Vendor Telephone Nbr:</b>	<b>317/581-1900--</b>	
<b>Name Of Contact Pers:</b>	<b>Brent Clodgo</b>	
<b>FAX Number:</b>	<b>317/581-1919--</b>	

In accordance with your bid, submitted in response to the above referenced solicitation, the Vendor agrees that the Indiana Department of Administration, Procurement Division, has the option to purchase the items listed below under the terms of this agreement.

The Vendor agrees to charge these prices for any products ordered on any QPA release received after the expiration of the QPA but issued prior to the expiration date. The quantity listed herein is an estimate of the requirements. The state may order substantially more or substantially less pursuant to the terms of this agreement.

**Orders are to be delivered only upon receipt of properly approved Quantity Purchase Award Release.**

Line Number	Quantity	UNIT	Article and Description	Unit Price
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This is an award of a Quantity Purchase Agreement for Internet Protocol Telephony Systems (IPT), Associated Communication Equipment and Professional Services per attached contract.

**Executive Branch Entities of State Government:**  
To order from this contract, you MUST contact IOT and receive approval before placing your order.

Primary IOT contact is :  
Jim Kuntz  
Manager, Network Services  
317-232-0669  
jkuntz@iot.IN.gov

Political Subdivisions of State Government:  
To order from this contract, contact the contractor directly.

**Brent Clodgo**  
General Manager - Indiana  
NETech Corporation  
701 Congressional Blvd. Suite 210  
Carmel, IN 46032  
Tel 317.581.1900  
Fax 317.581.1919  
Cell 317.501.6094  
bclodgo@NETechCorp.com

The following UN/CEFACT Unit of Measure Common Codes are used in this document:

Signature of Purchasing Officer	Typed Name	Signature Of Approval Office Of the State Attorney General	
	Date Signed	Typed Name	Date Signed
Authorized Signature	Indiana Department Of Administration Procurement Division 402 West Washington Street, Rm W468 Indianapolis, Indiana 46204 Telephone: (317) 232-3053		

**PROFESSIONAL/PERSONAL SERVICES CONTRACT**  
**RFP# 5-21**

This Contract, entered into by and between the Indiana Office of Technology (the "State") and NETech Corporation (the "Contractor"), is executed pursuant to the terms and conditions set forth herein.

WHEREAS, the State desires to contract for services IP Telephony services.

WHEREAS, the Contractor has the necessary knowledge and expertise to provide such services.

NOW, THEREFORE, the parties agree as follows:

**1. Duties of Contractor.**

The Contractor shall provide the services below relative to this Contract. The following entities may purchase from Contractor: All State of Indiana Facilities and Political Subdivisions of the State as defined in the RFP. }

Billing for State of Indiana Facilities will be to the Facilities or to their Central Office or as listed on the Notice to Proceed. Political Subdivisions, as defined in the RFP, will be responsible for the payment of any item purchased off of the contract

The Contractor, in compliance with the terms and conditions herein agrees to provide the **"IP Telephony Systems", and associated peripheral equipment required** as defined in the RFP capable of meeting or exceeding the requirements of the RFP, the Proposal, and the Contract.

**A. EQUIPMENT INSTALLATION AND USAGE:**

**1) Equipment Description and Condition**

All equipment is to be newly manufactured, (not remanufactured or refurbished), **except for service repair or if manufacturer certified re-manufactured parts are requested by the State in writing.**

**2) Equipment Site Preparation**

The Agency shall, at its own expense, prepare each site in accordance with the reasonable specifications set forth by the Contractor. The site preparation procedure and requirements shall be consistent with the RFP, **which is hereby incorporated by reference.**

**3) Installation**

The Contractor shall be responsible for unpacking, uncrating, and installing the System, cleanup, and in all other respects making the Equipment or services ready for operational use. The Contractor shall certify when completed that the Equipment or services is ready for use and that all cabling being installed is tested and certified in accordance with Attachment D of the RFP, **which is hereby incorporated by reference.**

**4) Risk of Loss Prior to Installation**

All risk of loss prior to delivery shall be borne by the Contractor.

## **5) Equipment or Services Implementation Schedule**

The delivery dates of the Equipment or services will be set on a per job basis. If any of the Equipment or services components are not delivered by the date specified, the delay will interfere with the Implementation Schedule resulting in significant loss and damage to the State. From the nature of the procurement, it would be impractical and extremely difficult to fix the actual damage sustained in the event of any such delay.

The State and Contractor, therefore, presume that in the event of any such delay the amount of damage which will be sustained from a delay will be the amount set forth in this paragraph, and they agree that in the event of any such delay, Contractor shall pay such amount as liquidated damages and not as a penalty. The State, at its option for amounts due the State as liquidated damages, may deduct such from any money payable to Contractor pursuant to the Contract, or may bill Contractor as a separate item. The amount of damages as it pertains to Contractor delays shall be the amount indicated below for each calendar day of delay in installation, but not for more than thirty (30) calendar days:

➤ ½% of the QPA Release amount, per working day.

If the delay is more than thirty (30) calendar days, then by written notice to Contractor, the State may terminate the right of Contractor to supply equipment, and may obtain substitute equipment. In this event, Contractor shall be liable for liquidated damages, in the amounts specified above until substitute equipment is installed, ready for use, or for 30 days from the installation date, whichever occurs first.

## **6) Equipment or Services Enhancements**

- a) The State may, at its sole discretion, upgrade, add to, or enhance System hardware or components with hardware or components of the same manufacturer but provided by another vendor/distributor without voiding System or Contractor warranties as long as the alternate provider is authorized and/or certified by the manufacturer to sell and/or service the System.
- b) The State, without prior approval of the Contractor, may connect the equipment herein contracted for to any equipment manufactured or supplied by other Contractors.
- c) When such upgrades, additions, enhancements, or inter-system connections are made by the State or its Contractors or authorized agents: (A) The State shall be responsible for damage to the System caused by or resulting directly or indirectly from such upgrades, additions, enhancements or inter-system connections; (B) Contractor shall not be held responsible for defects in software provided such defects are caused by or result directly or indirectly from such alterations or attachments; (C) Contractor will not be liable for any performance degradation of the System caused by or resulting directly or indirectly from such alterations or attachments; (D) Contractor will not be responsible for the proper or efficient operation of, or the cost or effort to modify, any software affected directly or indirectly by such alterations or attachments; (E) Contractor will not be responsible for maintenance of the alterations or attachments; (F) Contractor shall not be responsible for any injury to persons or damage to property, real or personal, caused by or resulting directly or indirectly from such alterations or attachments.

## **B Subcontracting**

- 1) Contractor must obtain the approval of the IOT before subcontracting any portion of this Contract. This limitation shall not apply to the purchase of standard commercial supplies or raw materials.
- 2) The Contractor will be responsible for Contract performance, compliance with terms and conditions of the Contract and the requirements of Federal and State equal opportunity and affirmative action statutes, rules and regulations in all subcontracts, if subcontractors are used.
- 3) The Contractor shall submit a written request to the State and receive written approval from the State whenever new subcontractors are to be utilized to complete any portion of this Contract.

## **2. Consideration**

The Contractor will be paid at the rate of as indicated below for performing the duties set forth above. Total remuneration under this Contract shall not exceed the QPA Catalog pricing for each project awarded under the QPA Agreement.

- A. The Equipment & Services. The Contractor will be entitled to the total price of the QPA Release as total remuneration under this Contract for all services performed and for all deliverables under the Statement of Work **for each project**, except as expressly stated elsewhere in this Contract. **For each project there will be** fixed bid price to carry out the Statement of Work, and to deliver the Equipment or services, in accordance with the Specifications labeled as "Option 2" and listed below, and to perform the other services as specified in the RFP and the Proposal. Actual payment due dates are governed by the Acceptance Date of the project.

Option 2 – "IP –Tel and Data" NETech Corporation is offering **49%** off U.S List Price for Cisco IP Telephony Communication Equipment and **45%** off U.S. List Price for Cisco Data Equipment.

- 49% discount for Cisco IP-Tel
  - 45% discount for Cisco Data
  - 15% discount for one (1) year SmartNet
  - 20% discount for three (3) years SmartNet
  - 30% discount for one (1) year NETech Maintenance
  - 35% discount for three (3) years NETech Maintenance
  - NETech maintenance list price is the same as Cisco SmartNet list price
- 1) The Equipment or services price quoted shall be for a the purchase of equipment or services meeting the Specifications, and shall include all freight, shipping, handling, transportation, insurance, delivery, hardware, software, supplies, standard commercial packaging and any other charges.
  - 2) The Equipment or services price is the total for meeting the entire specification as defined herein, and no additional charge may be requested later.

- 3) Communications Equipment will not exceed the price quoted to the State of Indiana by the respondent in their response to the RFP.

**B Product Orders.** In consideration of the terms and conditions contained herein, and the receipt of applicable fees, Contractor agrees to sell the hardware products, license the software programs, and to deliver the services listed in the Contractor's most recently published Catalog (found at [www.netechcorp.com](http://www.netechcorp.com) with a link for State Login) at the agreed upon rates upon execution of a State Requisition, QPA Release, or Purchase Order by IOT that is in accordance with the provisions of the Contract. A State Requisition, QPA Release, or Purchase Order by IOT that contains any terms and conditions that are not in accordance with the provisions of this Contract shall not be valid. The parties agree that the fees on all applicable Contractor's Manufacturer's Hardware and Software shall be discounted **in accordance with the pricing** listed in the Catalog. Notwithstanding the foregoing standard discounts, no discount shall apply on Contractor products, Proprietary Hardware or Software, which is designated by Contractor as non-discountable. In the event that such list price in the Catalog decreases, the current foregoing discounts will decrease proportionately. For example, if the price of an item in the Catalog is decreased by 25%, the new discount on the new list price shall reflect the additional discount if the item is an applicable Hardware or Software. The products and services listed in the Catalog are inclusive of the warranties expressly set forth in this Contract. The warranty periods are as follows, starting from Acceptance: 24 months. Post-warranty maintenance fees are variable based on the products/services and the type of support plan that the State is covered by and shall be subject to ("Maintenance Fee Cap") of this Contract, and shall be provided in accordance with the terms and conditions of the Maintenance Agreement.

3. **Term.** This Contract shall be effective for a period of forty-eight (48) months. It shall commence on the date the contract is signed by the Attorney General and shall remain in effect through for 48 consecutive months from the signing date.
4. **Access to Records.** The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.
5. **Assignment; Successors.** The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that the Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.
6. **Audits.** The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1, et. seq. and audit guidelines specified by the State.

**7. Authority to Bind Contractor.** The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and certifies that this Contract is not subject to further acceptance by the Contractor when accepted by the State.

**8. Changes in Work.** The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. No claim for additional compensation shall be made in the absence of a prior written approval executed by all signatories hereto.

**9. Compliance with Laws.**

A. The Contractor shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment of any state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.

B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC § 4-2-6 *et seq.*, IC § 4-2-7, *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ethics/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§ 4-2-6 and 4-2-7.

C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State. The Contractor agrees that any payments currently due to the State may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.

E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties.

F. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest under IC § 5-17-5.

G. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, as well as comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.

H. The Contractor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

I. As required by IC 5-22-3-7:

(1) the Contractor and any principals of the Contractor certify that (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations] , or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

(2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

**10. Condition of Payment.** All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of and federal, state or local statute, ordinance, rule or regulation.

**11. Confidentiality of State Information.** The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract, will not be disclosed to or discussed with third parties without the prior written consent of the State.

**12. Conflict of Interest.**

A. As used in this section:

"Immediate family" means the spouse and the unemancipated children of an individual.

"Interested party," means:

1. The individual executing this Contract;
2. An individual who has an interest of three percent (3%) or more of the Contractor, if the Contractor is not an individual; or
3. Any member of the immediate family of an individual specified under subdivision 1 or 2.

"Department" means the Indiana Department of Administration.

"Commission" means the State Ethics Commission.

- B. The Department may cancel this Contract without recourse by the Contractor if any interested party is an employee of the State.
- C. The Department will not exercise its right of cancellation under section B, above, if the Contractor gives the Department an opinion by the Commission indicating that the existence of this Contract and the employment by the State of the interested party does not violate any statute or rule relating to ethical conduct of State employees. The Department may take action, including cancellation of this Contract, consistent with an opinion of the Commission obtained under this section.
- D. The Contractor has an affirmative obligation under this Contract to disclose to the Department when an interested party is or becomes an employee of the State. The obligation under this section extends only to those facts that the Contractor knows or reasonably could know.

### **13. Continuity of Services.**

- A. The Contractor recognizes that the service(s) to be performed under this Contract are vital to the State and must be continued without interruption and that, upon Contract expiration, a successor, either the State or another contractor, may continue them. The Contractor agrees to:
  - 1. Furnish phase-in training, and
  - 2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- B. The Contractor shall, upon the State's written notice:
  - 1. Furnish phase-in, phase-out services for up to sixty (60) days after this Contract expires, and
  - 2. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required.

The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

- C. The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this Contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.
- D. The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).

### **14. Debarment and Suspension.**

- A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared



ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

B The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

**15. Default by State.** If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute the appropriate measures to collect monies due up to and including the date of termination.

**16. Disputes.**

A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim within ten (10) working days following notification in writing by either party of the existence of a dispute, then the following procedure shall apply:

1. The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the State within ten (10) working days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration or mediation for a determination, or otherwise the dispute may be submitted to an Indiana court of competent jurisdiction.
2. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

**17. Drug-Free Workplace Certification.** The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor in the State of Indiana has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Contract is in excess of \$25,000.00, the Contractor hereby further agrees that this Contract is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Contractor and made a part of the contract or agreement as part of the contract documents.

The Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

**18. Employment Option.** If the State determines that it would be in the State's best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-compete agreements that may be in effect. This release will be at no cost to the State or the employee.

**19. Force Majeure.** In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

**20. Funding Cancellation.** When the Director of the Office of Management and Budget makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

**21. Governing Laws.** This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

**22. Indemnification.** The Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officers, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The State shall **not** provide such indemnification to the Contractor.

**23. Independent Contractor.** Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.

**24. Information Technology Enterprise Architecture Requirements.** If the Contractor provides any information technology related products or services to the State, the Contractor shall comply with all IOT standards, policies and guidelines, which are online at <http://iot.in.gov/architecture/>. The Contractor specifically agrees that all hardware, software and services provided to or purchased by the State shall be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 794d) and IC 4-13.1-3. Any deviation from these architecture requirements must be approved in writing by IOT in advance. The State may terminate this Contract for default if the Contractor fails to cure a breach of this provision within a reasonable time.

## **25. Insurance**

A. The Contractor shall secure and keep in force during the term of this Contract, the following insurance coverages, covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from this Contract:

1. Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$700,000 per person and \$5,000,000 per occurrence unless additional coverage is required by the State.
2. Automobile liability with minimum liability limits of \$700,000 per person and \$5,000,000 per occurrence.
3. The Contractor shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Contract and proof of Workers compensation coverage meeting all statutory requirements of IC 22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.

B. The Contractor's insurance coverage must meet the following additional requirements:

1. The insurer must have a certificate of authority issued by the Indiana Department of Insurance.
2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.
4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency.

Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the State to immediately terminate this Contract. The Contractor shall furnish a certificate of insurance and all endorsements to the State before the commencement of this Contract.

## **26. Key Person(s)**

A. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this Contract for whatever reason, the State shall have the right to terminate this Contract upon thirty (30) days prior written notice.

- B. In the event that the Contractor is an individual, that individual shall be considered a key person and, as such, essential to this Contract. Substitution of another for the Contractor shall not be permitted without express written consent of the State.
- C. Nothing in sections A and B, above shall be construed to prevent the Contractor from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of the key person. Examples of such ancillary tasks include secretarial, clerical, and common labor duties. The Contractor shall, at all times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.

Key person(s) to this Contract is/are None

**27. Licensing Standards.** The Contractor and its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the Contractor pursuant to this Contract. The State shall not be required to pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such applicable standards, laws, rules or regulations. If licensure, certification or accreditation expires or is revoked, or if disciplinary action is taken against the applicable licensure, certification or accreditation, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract.

**28. Merger & Modification.** This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by all necessary parties.

**29. Minority and Women's Business Enterprises Compliance.** The Contractor agrees to comply fully with the provisions of 25 IAC 5 and any participation plan that may have been submitted to the State.

The following MBE's and WBE's listed on the Minority and Women's Business Enterprises Division directory of certified firms will be participating in this Contract.

<u>MBE/WBE AMOUNT</u>	<u>PHONE</u>	<u>COMPANY NAME</u>	<u>SCOPE OF PRODUCTS and/or SERVICES</u>	<u>UTILIZATION DATE</u>
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WBE (317) 636-2050	Briljent	Documentation, Project Management, Training	'06-'10
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MBE (317) 636-7355	Professional Data Dimensions	Network Assessment, Cabling	'06-'10
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**30. Nondiscrimination.** Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, the Contractor and its subcontractors shall not discriminate against any employee or applicant for employment in the performance of this Contract. The Contractor shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this Contract. The Contractor's execution of this Contract also signifies compliance with applicable federal laws, regulations and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

**31. Notice to Parties.** Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to:

Indiana Office of Technology  
Attention: LEGAL NOTICE  
Indiana Government Center North, Room N-551  
100 North Senate Avenue  
Indianapolis, IN 46204

B. Invoices to the State shall be sent to:

Indiana Office of Technology  
Attention: Accounts Payable  
Indiana Government Center North, Room N551  
100 N. Senate Avenue  
Indianapolis, IN 46204

C. Notices to the Contractor shall be sent to:

**(Include contact name and/or title, name of vendor, specific address.)**

**NETech Corporation**  
**Attn: Brent Clodgo**  
**701 Congressional Blvd, Suite 210**  
**Carmel, IN 46032**

D. As required by IC 4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the Indiana Auditor of State.

**32. Order of Precedence; Incorporation by Reference.** Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) This Contract, (2) attachments prepared by the State, (3) RFP# 5-21, (4) Contractor's response to RFP# 5-21, and (5) attachments prepared by the Contractor. All of the foregoing are incorporated fully by reference. All attachments, and all documents referred to in this paragraph are hereby incorporated fully by reference.

**33. Ownership of Documents and Materials.** All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the Contractor prior

to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Contractor transfers any ownership claim to the State and all such materials will be the property of the State. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to these materials developed for or supplied by the State and used to develop or assist in the services provided while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. Full, immediate and unrestricted access to the work product of the Contractor during the term of this Contract shall be available to the State.

**34. Payments.** All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC 4-13-2-20.

**35. Penalties/Interest/Attorney's Fees.** The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC 5-17-5, IC 34-54-8, and IC 34-13-1.

Notwithstanding the provisions contained in IC 5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

**36. Progress Reports.** The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

**37. Publicity.** The Contractor, its subcontractors, if any, nor any other organization contracted by or working with Contractor or its subcontractors shall not refer to the existence of this Contract in any press release, advertising or materials distributed to prospective customers, without first obtaining the prior written consent of the State.

**38. Renewal Option.** This Contract may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract.

**39. Security and Privacy of Health Information.** The Contractor agrees to comply with all requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) in all activities related to this Contract, to maintain compliance throughout the life of this Contract, to operate any systems used to fulfill the requirements of this Contract in full compliance with HIPAA and to take no action which adversely affects the State's HIPAA compliance.

The parties acknowledge that the Department of Health and Human Services has issued the Final Rule, as amended from time to time, on the Standards for Privacy of Individually Identifiable Health Information, as required by HIPAA. To the extent required by the provisions of HIPAA

and regulations promulgated thereunder, the Contractor covenants that it will appropriately safeguard Protected Health Information (PHI), as defined by the regulations, which is made available to or obtained by the Contractor in the course of its work under this Contract. The Contractor agrees to comply with applicable requirements of law relating to PHI with respect to any task or other activity it performs for the State as required by the final regulations.

**40. Severability.** The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

**41. Substantial Performance.** This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

**42. Taxes.** The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

**43. Termination for Convenience.** This Contract may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

**44. Termination for Default.**

A. With the provision of thirty (30) days notice to the Contractor, the State may terminate this Contract in whole or in part if the Contractor fails to:

1. Correct or cure any breach of this Contract;
2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
3. Make progress so as to endanger performance of this Contract; or
4. Perform any of the other provisions of this Contract.

B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.



D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

**45. Travel.** No expenses for travel will be reimbursed unless specifically permitted under the scope of services or consideration provisions. Expenditures made by the Contractor for travel will be reimbursed at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular. Out-of-state travel requests must be reviewed by the State for availability of funds and for appropriateness per Circular guidelines.

**46. Waiver of Rights.** No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right.

**47. Work Standards.** The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request

**48. State Boilerplate Affirmation Clause.** I swear or affirm under the penalties of perjury that I have not altered, modified or changed the State's Boilerplate contract clauses (as defined in the February, 2006 IDOA *Professional Services Contract Manual*) in any way except for the following clauses:

**49. Completion Delay Liquidated Damages Clause.** If the Respondent fails to deliver equipment or services by the completion date contained in the **Notice to Proceed (NTP)** the Respondent will refund to the State a liquidated damages amount equal to ½% of the QPA Purchase Order amount, per working day.

This clause will not apply for delays caused by Force Majeure or the manufacturer. Contractor agrees with the ½% QPA Purchase Order amount, per working day with the exception of a Maximum Penalty Schedule as follows:

Purchase Order Amount	Maximum Amount of Liquidated Damages
\$ 0.01 to \$ 20,000.00	\$ 2,000.00
\$ 20,000.01 to \$100,000.00	\$ 5,000.00
\$100,000.01 to \$500,000.00	\$20,000.00
\$500,000.01 and over	\$30,000.00

**50. Guaranteed Most Favorable Terms.** All of the prices, terms, warranties and benefits granted by Contractor herein are comparable to or better than those offered by Contractor to other non educational State and Local Government customers contracting under the same material terms and conditions. As used herein, material terms and conditions include those terms related to price or quality or in some manner affecting price.

If Contractor shall, prior to the execution of this Contract or installation of the equipment procured under this Contract, announce a general price reduction or make generally available to other State and Local Government customers more favorable terms or conditions with respect to this equipment, such prices, terms and conditions will be available to the State upon the date the general price reduction or change in terms and conditions becomes effective.

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**THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY.**

### Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the properly authorized representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

**In Witness Whereof**, Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below hereby agree to the terms thereof.

**(Contractor:)**

By: \_\_\_\_\_

Printed Name: Brent A. Clodgo

Title: General Manager

Date: September 29, 2006

(Where Applicable)

Attested By: \_\_\_\_\_

LINDSAY CARPENTER

10/2/2006

**State of Indiana Agency:**

By: \_\_\_\_\_

Karl B. Browning, Chief Information Officer

Date: \_\_\_\_\_

10/19/06

**Department of Administration**

\_\_\_\_\_

(for)

Carrie Henderson, Commissioner

Date: \_\_\_\_\_

10.23.06

**Office of Management and Budget**

\_\_\_\_\_

(for)

Charles E. Schalliol, Director

Date: \_\_\_\_\_

10/24/06

**APPROVED as to Form and Legality:**

**Office of the Attorney General**

\_\_\_\_\_

(for)

Stephen Carter, Attorney General

Date: \_\_\_\_\_

10/26/06